

# fact sheet

## employment standards act

### MINIMUM WAGE

#### What is the purpose of the *Employment Standards Act, 2000 (ESA)*?

The *ESA* sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

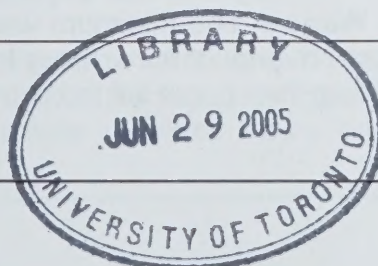
#### What work is not covered by the *ESA*?

Most employees and employers in Ontario are covered by the *ESA*. However, the *ESA* does **not** apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work in program approved by a college of applied arts and technology or university
- A secondary school student who performs work in a work experience program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the *Ontario Works Act, 1997*
- Police officers (except for the Lie Detectors part of the *ESA*, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the *ESA*.

For a complete listing of other job categories not governed by the *ESA*, please check the *ESA* and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the *ESA*.





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## QUALIFYING FOR MINIMUM WAGE

### What is minimum wage?

Minimum wage is the lowest rate an employer can pay an employee. Most employees are eligible for minimum wage, whether they are full-time, part-time, casual employees, or are paid an hourly rate, commission, piece rate, flat rate or salary.

### Who is entitled to minimum wage?

Most employees are entitled to at least minimum wage.

There are exceptions to the *ESA*'s usual rules for certain industries and job categories. Please refer to the chart in the "How Are You Covered by the *ESA*?" Fact Sheet for details about industry-specific and job-specific exemptions, and special rules regarding minimum wage.

### Does everyone get the same amount of minimum wage per hour?

No. There is a general minimum wage that applies to most employees. But there are other minimum wages that apply to:

- employees who regularly serve liquor directly to customers or guests in licensed premises
- students under 18 years of age who work during school breaks or summer holidays, or who work 28 hours a week or less when school is in session
- homeworkers
- hunting and fishing guides.

## RIGHTS AND RESPONSIBILITIES

### What are the current minimum wages for different jobs?

**General Minimum Wage** – This rate applies to most employees.

**Student Wage** – This rate applies to students under 18 years of age who work 28 hours a week or less when school is in session, or students employed during a school break or summer holidays.

**Liquor Servers Wage** – This hourly rate applies to employees who serve liquor directly to customers or guests in licensed premises as a regular part of their work. Licensed premises are businesses for which a license or permit has been issued under the *Liquor Licence Act*.

**Hunting and Fishing Guides Wage** – The minimum wage for hunting and fishing guides is not an hourly rate. They get a minimum amount for working less than five consecutive hours in a day, and a different amount for working five hours or more in a day – whether or not the hours are consecutive.

**Homeworkers Wage** – Homeworkers are employees who do paid work in their own homes. For example, they may sew clothes for a clothing manufacturer, answer telephone calls for a call centre, or write software for a high-tech company. **Note that students of any age (including students under the age of 18 years) who are employed as homeworkers must be paid the homeworker's minimum wage.**

The minimum wage rates in each of the above categories and scheduled annual increases are set out below:

Minimum Wage Rate	January 1995	February 1, 2004	February 1, 2005	February 1, 2006	February 1, 2007
<b>General Minimum Wage</b>	\$6.85 per hour	\$7.15 per hour	\$7.45 per hour	\$7.75 per hour	\$8.00 per hour
<b>Student Minimum Wage</b>	\$6.40 per hour	\$6.70 per hour	\$6.95 per hour	\$7.25 per hour	\$7.50 per hour
<b>Liquor Servers Minimum Wage</b>	\$5.95 per hour	\$6.20 per hour	\$6.50 per hour	\$6.75 per hour	\$6.95 per hour
<b>Hunting and Fishing Guides Minimum Wage</b>	\$34.25: rate for working less than five consecutive hours in a day;	\$35.75	\$37.25	\$38.75	\$40.00
	\$68.50: rate for working five or more hours in a day whether or not the hours are consecutive	\$71.50	\$74.50	\$77.50	\$80.00
<b>Homeworkers Wage</b> (110 per cent of the general minimum wage)	\$7.54 per hour	\$7.87 per hour	\$8.20 per hour	\$8.53 per hour	\$8.80 per hour

### How is minimum wage calculated for employees who earn commission?

If an employee's pay is based completely or partly on commission, it must amount to at least the minimum wage for each hour the employee has worked.

To ensure an employee is receiving the minimum wage, the total amount the employee earned in regular wages over a work week is divided by the number of hours the employee worked in that week. Here's an example. (Note: where overtime hours are worked, the calculation is more complicated.)



### A typical case: calculating pay

Luba earned \$150, working 25 hours during her work week in March 2004:

- $\$150 \div 25 = \$6$

The minimum wage is \$7.15 an hour, then 25 hours at \$7.15 is \$178.75. Therefore, Luba is owed the difference between her commission pay (\$150) and what her employer would have paid for the same number of hours at the minimum wage (\$178.75):

- $\$178.75 - \$150 = \$28.75$

Luba's employer owes her \$28.75

Industry-specific and job-specific exemptions and special rules may apply to some salespeople who earn commission. Please see the chart in the *How Are You Covered by the ESA?* Fact Sheet for details.

### Can an employer take into account the provision of room and meals to an employee when calculating minimum wage?

Yes, but there are limits. Room and board (meals) shall not be deemed to have been paid as wages unless the employee has received the meals and occupied the room.

#### What employers can deduct for room and board

The amounts that an employer is deemed to have paid to the employee as wages for room or board or both is set out below:

- Room (weekly)
  - private \$31.70
  - non-private \$15.85
  - non-private (domestic workers only) \$0.00
- Meals
  - each meal \$2.55
  - weekly maximum \$53.55
- Rooms and meals (weekly)
  - with private room \$85.25
  - with non-private \$69.40
  - non-private (domestic workers only) \$53.55
- Harvest workers (only) weekly housing
  - serviced housing \$99.35
  - unserviced housing \$73.30

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If an employee is paid more than the minimum wage, the amount that room and board can be deemed as wages paid to an employee can also increase. However, an employer must have a *written* authorization from the employee in order that a higher amount can be deemed paid as wages. In this case, the wages—after wages have been deemed paid for the provision of room and board but before any deductions are made—must be equal to or greater than the minimum wage less the maximum amounts set out above that can be deemed as wages for room and board.

## **Can employers make deductions from an employee's wages?**

Yes, but only certain kinds of deductions can be made:

### **1. Statutory Deductions**

Federal and provincial statutes sometimes require an employer to withhold or make deductions from an employee's wages. For example, employers are required to make deductions for income taxes, employment insurance premiums and Canada Pension Plan contributions. An employer isn't permitted to deduct more than the law says and can't legally make deductions if the money isn't then forwarded to the proper authority.

### **2. Court Order**

A court may order an employer to make a deduction from an employee's wages if the employee owes money either to the employer, or to someone else.

### **3. Written Authorization**

An employer may also deduct money from an employee's wages with the employee's written authorization. An oral authorization is not enough. The employee's written authorization must state:

- that a deduction from wages is allowed
- the amount of money to be deducted—or it must provide a method of calculating the specific amount of money to be deducted.

Even with a written authorization, an employer *can't* withhold, deduct or require wages to be returned:

- because of the employee's faulty work
- because the employer had a cash shortage or property lost or stolen, if the employee wasn't the only person who had access to the cash or property.



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## What happens if an employee comes in to work his or her shift, but is sent home after working less than three hours?

When an employee is required to report to work, but works less than three hours, he or she must be paid whichever of the following amounts is the highest:

- three hours at the minimum wage, or
- the employee's regular wage for the time worked.

For example, if an employee is paid \$10.00 an hour and works only two hours, he or she is entitled to three hours at minimum wage (e.g.,  $\$7.15 \times 3 = \$21.45$ )—instead of two hours at his or her regular wage ( $10.00 \times 2 = \$20.00$ ).

### This is called the “three-hour rule.”

The rule doesn't apply to:

- students (including students over 18 years of age)
- employees whose regular shift is three hours or less
- where the cause of the employee not being able to work at least three hours was beyond the employer's control

Special rules may apply to certain industries. Please refer to the *ESA* and regulations.

## What happens when the minimum wage changes?

Beginning February 1, 2004, if the minimum wage rate changes during a pay period, the pay period will be treated as if it were two separate pay periods and the employee will be entitled to at least the minimum wage that applies in each of those periods.

## What if the employer does not follow the *ESA*?

If an employee thinks the employer is not complying with the *ESA*, he or she can call or visit the nearest Ministry of Labour office to discuss a particular situation or to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the *ESA*.

This Fact Sheet provides general information about minimum wage as set out in the *Employment Standards Act, 2000 (ESA)* and its regulations. For complete information please refer to the *ESA* and the regulations.

## Need More Information?

If you have questions about the *Employment Standards Act*, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the *Employment Standards Act*:

- Ministry of Labour website: [www.gov.on.ca/lab](http://www.gov.on.ca/lab)
- Ministry of Labour Publications Sales unit: 1-800-809-4731

## ESA Fact Sheets are available on the following subjects:

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| <input type="checkbox"/> Agricultural Workers            | <input type="checkbox"/> Minimum Wage                              |
| <input type="checkbox"/> Domestic Workers                | <input type="checkbox"/> Pregnancy Leave & Parental Leave          |
| <input type="checkbox"/> Emergency Leave                 | <input type="checkbox"/> Public Holidays                           |
| <input type="checkbox"/> Family Medical Leave            | <input type="checkbox"/> Retail Workers                            |
| <input type="checkbox"/> Frequently Asked Questions      | <input type="checkbox"/> Role of the Ministry of Labour            |
| <input type="checkbox"/> Homeworkers                     | <input type="checkbox"/> Termination of Employment & Severance Pay |
| <input type="checkbox"/> Hours of Work & Overtime        | <input type="checkbox"/> Vacation                                  |
| <input type="checkbox"/> How Are You Covered by the ESA? | <input type="checkbox"/> What Young Workers Should Know            |
| <input type="checkbox"/> How to File a Claim             |  |

*This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the Employment Standards Act, 2000 (ESA) and regulations.*

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the ESA can also be found at the *Employment Standards Act* section of the Ministry of Labour's website: [www.gov.on.ca/lab](http://www.gov.on.ca/lab). You can order copies of the ESA and related information materials, from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca) or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.





## NOTES